IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

ITA.No. 72 of 2002

M.P.NO.12/COCH/2001 ARISING OUT OF ITA.NO.519/COCH/94 DATED 23.8.2001 OF THE INCOME TAX APPELLATE TRIBUNAL,COCHIN BENCH
.....

APPELLANT/APPELLANT:

THE COMMISSIONER OF INCOME TAX, COCHIN.

BY ADV. SRI.P.K.R.MENON(SR.),SC FOR IT
SRI.GEORGE K. GEORGE, SC FOR IT

RESPONDENT/RESPONDENT:

SHRI M.M.JOSEPH, DEVELOPMENT OFFICER,
LIFE INSURANCE CORPORATION OF INDIA, COCHIN.

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

I.T.A.No.72 of 2002

Dated, this the 12th day of July, 2007

JUDGMENT

H.L.Dattu, C.J.

This appeal arises out of an order passed by the Income Tax Appellate Tribunal, Cochin Bench in I.T.A.No.519 of 1994 dated 23rd August, 2001.

2. The revenue has raised the following questions of law for consideration and decision of this Court:

> "1. Whether, on the facts and in the circumstances of the case and also in the light of the decision of the Supreme Court in 243 ITR 143, the Tribunal is right in law in allowing any deduction separately from incentive bonus?
>
> 2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding:
>
> i. 30% of the incentive bonus is to be excluded from the definition of "emoluments under section 17"
>
> ii. 30% of the incentive bonus should be excluded from the computation at the inception itself?
>
> 3. Whether, on the facts and in the circumstances of the case (and the incentive bonus being salary), the assessee is entitled to any deduction excess/different from standard deduction allowable/permissible under section 16(1) of the Incometax Act?"

3. The aforesaid issues are no more debatable in view of the judgment pronounced by this Court in the case of **Commissioner of Income Tax** v. **T.K. Ginarajan, Development Officer, LIC of India**, (2002) 253 ITR 463. In the said decision this Court has observed as under:

> "Whether any expenditure is allowable in the computation of income or any receipt has to be added to income only after providing for the expenditure is a matter to be found in the statute, that is, the Income-tax Act. The scheme of the Act is compartmentalisation of income under various heads and

> computation of the taxable portion strictly in accordance with the formula of deductions, rebates and allowances provided therein. The first step in this regard is to identify the head under which the income is assessable. Deductions and allowances are specific for each head of income. The definition of "salary" under section 15 of the Income-tax Act, 1961, is so wide and is only an inclusive one taking in all receipts from the employer in the form of wages, commission, bonus, profits in lieu of or in addition to salary, etc. Therefore, any payment by the employer to the employee towards consideration for services rendered in the course of employment comes within the description of "salary" which includes perquisites as well.
>
> The incentive bonus is a percentage of the premium received by the LIC of India for the business canvassed through the Development Officers. It is not the reimbursement of any expenditure and is not even linked to expenditure, if any, incurred by the Development Officers. Further, in cases where the remuneration otherwise receivable by the Development Officers is in excess of 20 per cent of the net premium, then the Development Officer is not entitled to any incentive bonus. It is an additional payment and is nothing but a salary coming within the meaning of section 15 of the Act and the Development Officers are not entitled to any deduction over and above the standard deduction."

4. Following the observations made in the aforesaid decision the questions of law raised by the revenue are answered in the negative and in favour of the revenue and against the assessee.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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